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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Elehue Kawika Freemon and |) | |
| Lucille K. Freemon, |) | CC Docket No. 94-89 |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | |
| |) | File No. E-90-393 |
| AT&T Corp., |) | |
| |) | |
| Defendant. |) | |

DEFENDANT'S MOTION TO STRIKE POWER OF ATTORNEY

Pursuant to Sections 1.21, 1.221, and 1.243 of the Commission's rules, 47 C.F.R. §§ 1.21, 1.221, and 1.243, defendant AT&T Corp. ("AT&T") hereby moves to strike the "Power of Attorney" filed by Complainant Elehue K. Freemon in this case.¹

On September 16, 1994, Mr. Freemon filed the Power of Attorney, his sole explanation being that he "apologize[d] for any inconvenience [in] the matter of my

¹ A copy of the Power of Attorney is annexed hereto as Exhibit A.

No. of Copies rec'd
List A B C D E

at 6

Appearance Notice Copies." Although it is not entirely clear what Mr. Freemon sought to achieve with his submission, it appears that the Power of Attorney purports to authorize Mr. Freemon to act as attorney for Complainant Lucille K. Freemon in this proceeding. The Power of Attorney cannot so authorize Mr. Freemon, and accordingly it should be stricken.

Under the Commission's rules, which provide that "[a]ny Party may appear before the Commission and be heard in person or by attorney," Mr. Freemon may represent himself. See 47 C.F.R. § 1.21(a) (emphasis added). As the Commission's rules make clear, however, Mr. Freemon may not represent another party, such as Mrs. Freemon. That right is reserved to members of the bar in good standing, which Mr. Freemon is not, and to Mrs. Freemon herself. See 47 C.F.R. §§ 1.21, 1.23. Accordingly, the Power of Attorney does not and cannot authorize Mr. Freemon to represent Mrs. Freemon in this matter.

Mrs. Freemon is, of course, free to obtain other, permitted representation, or to represent herself in this proceeding. But even this option may be foreclosed. If, as the Administrative Law Judge has suggested, the signature on Mrs. Freemon's Notice of Appearance is not authentic, then she has failed to make a valid appearance within 20 days of

the Commission's designation order, and may have forfeited her right to a hearing.² See 47 C.F.R. § 1.221. The hearing officer need not resolve this authenticity issue at this stage of the proceedings, before AT&T has used available means of discovery to attempt to determine the

² Moreover, even if the signature on the Notice of Appearance is authentic, both Mr. Freemon's and Mrs. Freemon's Notices of Appearance apparently fail to comply with the Commission's rules in other important respects, and are subject to being stricken on that basis. See Memorandum Opinion and Order, FCC 94M-529, released September 16, 1994. For example, the Commission recently noted that it "has had a consistent practice of considering documents filed with the Commission when the document is received at the location designated by the Commission," and has codified that practice in its rules. See 59 FR 44340 (August 29, 1994); 47 C.F.R. § 1.7. Here, although the parties' appearances were required to be "file[d] with the Commission" on or before September 1 (see Prehearing Order, ¶ 2 and 47 C.F.R. 1.221(c)), the Freemons' notices were mailed to the agency on August 31 and in all likelihood were not received there until well after September 1. The Freemons' filings thus would be untimely, barring further prosecution of this action. See 47 C.F.R. § 1.221.

- 4 -

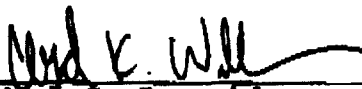
source of the signature. In accordance with the Commission's rules, however, the hearing officer should strike the Power of Attorney immediately.

For the reasons set forth above, defendant's motion to strike the Power of Attorney should be granted.

Respectfully submitted,

AT&T Corp.

By


Mark C. Rosenblum
Robert J. McKee
Peter H. Jacoby
Clifford K. Williams

Its Attorneys

Room 3252F2
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-7935

September 23, 1994

Elahue K. Freemon
General Delivery
Big Bear, California 92315

September 14, 1994

Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
Washington, D. C. 20554

Re: CC Docket NO. 94-89, File No. E-90-393, Appearance Notice
copies.

Dear Judge Walter C. Miller,

My apologize for any inconvenience to the matter of my Appearance Notice
Copies.

Sincerely Yours


Elahue K. Freemon, Compliant

EXHIBIT A

Recording requested by and when recorded mail to
 Lucille K. Freeman
 730 W. Columbia Ave.
 Long Beach, California 90806

Power of Attorney

I, Lucille K. Freeman, of
Long Beach, Los Angeles
California, appoint Mr. Ethel M. Henry, of
Bla Bear Lake, San Bernardino
California as my attorney in fact to act in my place for the purposes of

1. Concerning all duties so to continue the present Federal Communications Commission Formal Complaint I.C. 90-393 against American Telegraph and Telephone Corp.
2. Concerning the signing of all documents before and after the change of venue to FCC 64M 482 42656, GC Docket No. 94-89.

except that my attorney in fact shall not have the power of

1. Signing documents to bear as witness upon this complaint.

This power of attorney shall become effective on September 1, 1994 and will terminate upon the proper conclusion of the Formal Complaint I.C. 90-393.

September 9, 1994

Lucille K. Freeman
 Lucille K. Freeman

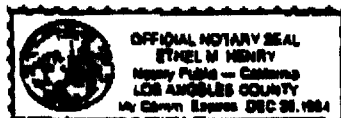
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

No. 9907

State of California
 County of Los Angeles

On September 16, before me, Ethel M. Henry
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"
 personally appeared Lucille K. Freeman
(NAME OF SIGNER)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Ethel M. Henry
SIGNATURE OF NOTARY

CERTIFICATE OF SERVICE

I, Evelyn Freemon, do hereby certify on this, the 16th day of September 1994, I served copies of the foregoing " Power of Attorney and Letter to Honorable Walter C. Miller " by First- class, U.S. Mail, on the following:

Peter H. Jacoby, Esquire
AT&T Corp.
Room 3245F3
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Honorable Walter C. Miller
Administrative Law Judge
FCC
2025 M Street, N.W.
Washington, D.C. 20554

Keith Nichols,
Enforcement Division
Common Carrier Bureau
Federal Communications
Washington, D.C. 20554

Secretary of FCC
2025 M Street, N.W.
Washington, D.C. 20554

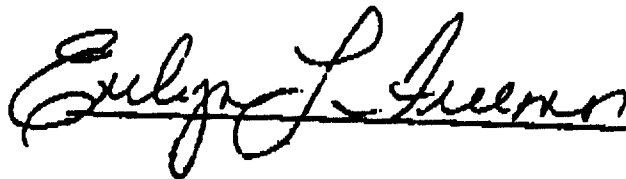
A handwritten signature in cursive script, reading "Evelyn L. Freemon", written in dark ink.

EXHIBIT A

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, hereby certify that a true copy of the foregoing "Defendant's Motion to Strike Power of Attorney" by AT&T Corp. was this date served by first class mail, postage prepaid, upon each of the following persons:

Elehue Kawika Freemon
General Delivery
Big Bear Lake, CA 92315

Lucille K. Freemon
3411 California Avenue
Long Beach, CA 90807

Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554

Thomas D. Wyatt*
Chief, Formal Complaints and
Investigations Branch
Common Carrier Bureau
Federal Communications Commission
1250 23rd Street, N.W. - Plaza Level
Washington, D.C. 20554

Keith Nichols, Esq.*
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554


Vi Carlone

September 23, 1994

* By hand delivery.